

Cite as 2011 Ark. 200

SUPREME COURT OF ARKANSAS

No. CR 10-855

SILAS NOBLE, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 5, 2011

PRO SE MOTION FOR EXTENSION
OF TIME TO COMPLETE APPEAL
[MILLER COUNTY CIRCUIT
COURT, CR 2009-314, HON. JOE E.
GRIFFIN, JUDGE]

MOTION TREATED AS MOTION
FOR EXTENSION OF TIME TO FILE
BRIEF, FOR APPOINTMENT OF
COUNSEL, TO SUPPLEMENT THE
RECORD, AND FOR ACCESS TO
THE RECORD; MOTION
GRANTED IN PART AND DENIED
IN PART; WRIT OF CERTIORARI
ISSUED.

PER CURIAM

An amended judgment filed on December 31, 2009, reflects that appellant Silas Noble, Jr., entered a negotiated plea of guilty to one count of manufacture, delivery, or possession of cocaine on October 9, 2009, and that he received a sentence of 240 months' imprisonment in the Arkansas Department of Correction. On January 25, 2010, appellant filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied. Appellant has lodged an appeal of the order denying postconviction relief, and he has now filed the instant motion for extension of time to complete appeal.

In his motion, appellant seeks additional time in which to file his brief, requests that he be appointed counsel, and both references a need for the transcript and asks that the entire

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transcript of the proceedings be designated and included on appeal. We therefore treat the motion as one for an extension of time, for appointment of counsel, to supplement the record, and for access to the record.

Appellant asserts that circumstances of his incarceration and his need for a transcript are the reasons he desires additional time for preparation of his brief. Appellant's request for an extension of time in which to file his brief is the first such request for an extension of time in this appeal. Appellant's request concerning an extension of time is granted as indicated below.

Appellant requests that this court appoint an attorney to represent him because he is indigent and has had difficulty in obtaining the record. The fact that an appellant is indigent and unskilled, without more, does not provide a basis for appointing counsel. *Clarks v. State*, 2009 Ark. 495 (per curiam) (citing *Viveros v. State*, 372 Ark. 463, 277 S.W.3d 223 (2008) (per curiam)). Postconviction matters, such as Rule 37.1 petitions, are considered civil in nature and there is no absolute right to appointment of counsel. *Smith v. State*, 2010 Ark. 365 (per curiam). Nevertheless, if an appellant makes a substantial showing that he is entitled to relief in a postconviction appeal and that he cannot proceed without counsel, we will appoint counsel. *Id.*

In this case, appellant has made no statement concerning the merits of the appeal, and he therefore has not demonstrated that he is entitled to relief. Accordingly, the request for appointment of counsel is denied.

Appellant also appears to request that all transcripts from the proceedings be included in the record. To the extent that the requested transcripts may be relevant to this appeal, we

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grant the request to supplement the record. The Rule 37.1 petition references two hearings. One reference is to the proceedings on October 9, 2009, the date that appellant entered his plea. Appellant also referenced a pretrial hearing on October 6, 2009. Because the proceedings on those dates are referenced in the petition, the transcripts are relevant to this appeal, and we grant the request to supplement the record as to those transcripts.

Because we grant the motion to supplement the record in part, we issue a writ of certiorari to bring up materials in the record below related to the two referenced hearings. The circuit clerk is directed to prepare or have prepared transcripts for any hearings for proceedings in this matter on that date and provide them to this court within thirty days of the date of this opinion.

We direct our clerk to provide a copy of the supplemented record to appellant once the writ has been returned. The copy must be returned with appellant's brief, or the brief will not be filed. Appellant's brief is due forty days from the date that the writ is returned and appellant is provided a copy of the record.

Motion treated as motion for extension of time to file brief, for appointment of counsel, to supplement the record, and for access to the record; motion granted in part and denied in part; writ of certiorari issued.